

**R164. Commerce, Securities.**

**R164-15. Federal Covered Securities.**

**R164-15-1. Notice Filings for Offerings of Investment Company Securities.**

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5 and 61-1-24.

(2) The rule requires a notice filing prior to the offer or sale of securities described in Subsection 61-1-15.5(1) and sets forth the filing procedure.

(3) The rule also authorizes optional electronic filing of notices.

(B) Definitions

(1) "Designee" means any person or entity authorized and recognized by the Division in this rule to accept filings on behalf of the Division by electronic or other means of communication.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Filing requirements

(1) Prior to the offer or sale of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, the issuer must submit to the Division or its designee the following:

(1)(a) A completed manually signed NASAA Form NF;

(1)(b) A completed manually signed NASAA Form U-2 - Uniform Consent to Service of Process; and

(1)(c) A fee as specified in the Division's fee schedule.

(2) The issuer may submit a copy of all documents that are part of the federal registration statement filed with the SEC as a substitute for NASAA Form NF.

(3) Upon written request of the Division and within the time period set forth in the request, the issuer must submit to the Division a copy of any document, identified in the request, that is part of the federal registration statement filed with the SEC or is part of an amendment to such federal registration statement.

(4) All securities included in the same prospectus may be covered under a single notice filing.

(5) An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another.

(D) Term of notice filing

(1) Except as provided in Subparagraph (D)(2), a notice filing under Paragraph (C) is effective for one year from the date filed with the Division or its designee.

(2) A notice filing under Paragraph (C) for a unit investment trust is for an indefinite period of time from the date filed with the Division or its designee.

(3) To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

(E) Renewal

A notice filing, for which the term is about to expire, may be renewed by submitting to the Division or its designee, another notice and payment of the applicable fee in accordance with Paragraph (C).

(F) Amendments

(1) The materials filed pursuant to Paragraph (C) may be amended by forwarding the corrected information to the Division or its designee and requesting that the file be amended accordingly.

(2) No fee is required for an amendment.

(G) Recognized designee

(1) The Division authorizes and recognizes the Securities Registration Depository, Inc. as a designee to receive notice filings under this rule on behalf of the Division, including but not limited to notices, fees, and all documents that are part of a federal registration statement filed with the SEC under the Securities Act of 1933.

(2) The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.

(H) Sales Report

Within 30 days of the close of the offering or when the issuer ceases to rely upon the notice, whichever occurs first, unit investment trusts shall file a sales report on NASAA Form NF.

No sales report is required for open-end management investment companies.

**R164-15-2. Notice Filings for Rule 506 Offerings.**

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5 and 61-1-24.

(2) The rule requires a notice filing within 15 days after the first sale in this state of securities described in Subsection 61-1-15.5(2) and sets forth the filing procedure.

(3) This rule has been amended in recognition of the amendment of Regulation D by the Securities and Exchange Commission (SEC) to authorize the filing of Form D in electronic format with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) as described in Securities and Exchange Commission Securities Act Release No. 8891.

(4) This rule authorizes an issuer to file Temporary Form D while that form remains in effect or a copy of the notice of sales on Form D filed electronically with the SEC until an electronic filing system acceptable to the Division is implemented that permits the electronic filing of Form D with the Division or its designee.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "NASAA" means the North American Securities Administrators Association, Inc.

~~[(3) "SEC Form D" means the document, as adopted by the United States Securities and Exchange Commission and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled "Form D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption", including Part E and the Appendix.]~~

~~(C) Filing requirements~~

~~(1) An issuer offering a security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933 must [submit to] file with the Division or its designee, no later than 15 days after the first sale of such federal covered security in this state, [the following:] an initial notice and a filing fee as follows:~~

~~(1)(a) [A manually signed notice on SEC Form D,] The issuer shall file an initial notice on SEC Form D. For Purposes of Subsection 61-1-15.5(2), the initial notice on SEC Form D shall consist of either,~~

~~(1)(a)(i) the Temporary Form D (17 CFR 239.500T), including Part E and the Appendix, as adopted by the SEC while that form remains in effect from September 15, 2008 through March 15, 2009; or~~

~~(1)(a)(ii) a copy of the notice of sales on Form D filed in electronic format with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) and in effect on September 15, 2008.~~

~~(1)(b) [A completed manually signed NASAA Form U-2 - Uniform Consent to Service of Process; and] Regardless of whether the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the SEC, such form shall be manually signed by a person duly authorized by the issuer;~~

~~(1)(c) [A fee as specified in the Division's fee schedule.] If the issuer files a notice on Temporary Form D, it shall also furnish a completed manually signed NASAA Form U-2 - Uniform Consent to Service of Process;~~

~~(1)(d) The issuer shall include with the initial notice a statement indicating:~~

~~(1)(d)(i) The date of the first sale of securities in the state of Utah; or~~

~~(1)(d)(ii) That sales have yet to occur in the state of Utah; and~~

~~(1)(e) The issuer shall submit a fee as specified in the Division's fee schedule.~~

~~(2) An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another.~~

~~(3) An issuer may file an amendment to a previously filed notice of sales on Form D at any time and must file such an amendment to correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error.~~

~~(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D~~

regardless of why the amendment is filed.

KEY: mutual funds, securities, securities regulation

Date of Enactment or Last Substantive Amendment: September 3, 1997

Notice of Continuation: July 30, 2007

Authorizing, and Implemented or Interpreted Law: 61-1-15.5; 61-1-24